IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Lala Ram Vs. State of Rajasthan
(S.B. CRIMINAL APPEAL NO.894/2003)

S. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 14-5-2003 in Sessions Case No.81/2002 (97/2002) passed by Smt. Kamal Dutt, RHJS, Additional Sessions Judge (Fast Track) Alwar.

Date of Judgment: March 29, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mr. Arvind Kumar Gupta, for the appellant.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT:

Challenge in this appeal is to the judgment dated May 14, 2003 of learned Additional Sessions Judge (Fast Track) Alwar whereby the appellant Lala Ram was convicted under section 376 (2f) IPC and sentenced him to suffer rigorous imprisonment for ten years and fine of Rs.5000/-, in default to further suffer rigorous imprisonment for one year.

2. It is the prosecution case that informant Bhanwari Devi (Pw.9) submitted a written report (Ex.P-10) on July 14, 2002 at Police Station Pratapgarh with the averments that her daughter Mala (fictitious name) aged 13-14 years went to the forest for grazing goats where she was raped by the appellant. On that report a case was registered and investigation commenced. After usual investigation charge sheet was filed. In due course the case came

up for trial before the learned Additional Sessions Judge (Fast Track) Alwar. Charge under section 376 (2f) IPC was framed against the appellant, who denied the charges and claimed trial. The prosecution in support of its case examined as many as 13 witnesses. In the explanation under Sec.313 CrPC, the appellant claimed innocence. One witness in defence was examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above.

3. According to learned counsel for the appellant the age of the prosecutrix was around 16 years and no injury was found on her genitals therefore the appellant could not be convicted and sentenced under section 376 (2)(f) IPC. Learned Public Prosecutor however opposed this contention and supported the impugned judgment.

4. Having scanned the evidence adduced at the trial, I find that the prosecution is able to establish that the appellant had committed sexual intercourse with the prosecutrix who was willingly surrendered herself to appellant and she did not receive any injury on her genitals. The age of appellant was 22 years on the date of offence. Although the prosecutrix was studying in a school her age certificate was not produced by the prosecution. However an attempt was made to establish with the help of medical evidence that the age of prosecutrix was below 14 years. Father of prosecutrix was died when the age of mother of the prosecutrix was 38 years and prosecutrix was the second daughter of her mother. Conjoint reading of ocular and medical evidence demonstrates that the age of prosecutrix on the date of offence was nearing 16 years.

5. In State of Rajasthan Vs. Ram Narain (1996)8 SCC 64, the age

of the prosecutrix was between 15 to 17 years and the age of accused was 18 years. Learned Sessions Judge convicted the accused under sections 376, 366 and 342 IPC and sentenced him to undergo imprisonment for seven years, five years and one year respectively and imposed a fine of Rs.200/-. On appeal the High Court reduced the sentence to the period already undergone, namely one and a half months. The Apex Court set aside the judgment of High Court and observed as under:- (Para 7)

> "The question is: Whether the High Court is right in reducing the sentence to the period already undergone, i.e., one and a half months? We think that the High Court has committed grave error of law in reducing the sentence. Therefore the judgment of High Court is set aside. The conviction of the first accused is upheld and he is sentenced to undergo rigorous imprisonment for 5 years under section 376 IPC."

6. In Ummaid Nath Vs. State of Rajasthan (1999(2) RCC 1383) wherein the age of the prosecutrix was found below 16 years at the time of occurrence and the prosecutrix went with the accused willingly and thus the sentence of ten years rigorous imprisonment was reduced to five years rigorous imprisonment.

7. Since the prosecution failed to produce the school register of the prosecutrix to establish her age on the date of occurrence and from the medical and ocular evidence it appears that the prosecutrix age was nearing 16 years, I find that sub section 2(f) of Section 376 could not have been invoked. I however find the appellant guilty under section 376 IPC. But looking to the age of the appellant, I am of the view that provisions contained in the proviso appended to Section 376 IPC are attracted. For these reasons, I partly allow the appeal and while maintaining the conviction

of appellant under section 376 IPC, I reduce his sentence from ten years rigorous imprisonment and fine of Rs.5,000/- to five years rigorous imprisonment and fine of Rs.500/- in default to further suffer fifteen days rigorous imprisonment.

The impugned judgment of learned trial court stands modified as indicated above.

(Shiv Kumar Sharma)J.

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